

STATE OF MINNESOTA  
OFFICE OF ADMINISTRATIVE HEARINGS

FOR THE COMMISSIONER OF HUMAN SERVICES

In the Matter of the SIRS Appeal of  
Grove Homes, Inc.

**FINDINGS OF FACT, CONCLUSIONS,  
AND ORDER ON APPLICATION FOR  
ATTORNEY'S FEES AND EXPENSES  
UNDER THE MINNESOTA EQUAL  
ACCESS TO JUSTICE ACT**

On November 30, 2004, the undersigned Administrative Law Judge issued a decision in this matter recommending that the Commissioner deny the Department's petition to recover funds paid to Grove Homes, Inc. for supported living services in the amount of \$276,900.19, and permit the Department to recover the portion of \$52,189.08 and \$7,653.76 paid for providing transportation services for two clients on days when no transportation was actually provided. By order entered on August 20, 2005, the Commissioner adopted the ALJ's findings, conclusions, recommendation, and memorandum<sup>1</sup> and ordered that the Department recover only the portion of \$52,189.08 and \$7,653.76 paid for providing transportation on days when no transportation was provided. In addition, the Commissioner remanded the recovery portion of the case to the Department to determine the amount of \$52,189.08 and \$7,653.76 that the Department could rightfully recover. The parties reached an agreement on the amount of the overpayment on November 9, 2005, and on March 1, 2006, the parties informed the Commissioner that they had reached a Stipulation of Settlement on the remaining issues. By Order dated March 2, 2006, the Commissioner incorporated the Stipulation of Settlement and the August 20, 2005 Order and adopted the two documents as the final order in this matter.

On September 16, 2005, prior to the stipulated settlement, Grove Homes filed an application for attorney's fees and costs pursuant to Minn. R. 1400.8401 and the Minnesota Equal Access to Justice Act (MEAJA), Minn. Stat. §§ 15.471 to 15.474. On September 29, 2005, the Administrative Law Judge denied the motion as premature because the Commissioner had not yet issued a final order. Grove Homes renewed its motion on March 15, 2006. The Department of Human Services filed its response on March 31, 2006, and the record closed on that date.

Samuel D. Orbovich, Orbovich & Gartner, Historic Hamm Building – Suite 417, 408 St. Peter Street, St. Paul, Minnesota 55102-1187, represented Respondent, Grove Homes, Inc. Kerri Stahlecker Hermann, Assistant Attorney General, 445 Minnesota

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<sup>1</sup> The Commissioner did not adopt the portion of the ALJ's Memorandum dealing with equitable estoppel.

Street, Suite 900, St. Paul, Minnesota 55101-2127, represented the Department of Human Services.

Based upon the filings of the parties and for the reasons set forth in the attached memorandum, the Administrative Law Judge makes the following:

### **STATEMENT OF ISSUES**

1. Were the Department's efforts to recover a \$336,763.03 overpayment of public funds to Grove Homes "substantially justified" within the meaning of Minn. Stat. § 15.472?

2. If not, does this matter warrant an award of fees exceeding the \$125.00 per hour rate provided by Minn. Stat. § 15.471, subd. 5(c)?

Based on the evidence in the hearing record, the Administrative Law Judge makes the following:

### **FINDINGS OF FACT<sup>2</sup>**

1. Grove Homes is a four-bed group home in Pequot Lakes, Crow Wing County, Minnesota, that provides supported living services, a type of residential habilitation service for persons with mental retardation and related conditions. For those persons unable to pay for these services, the cost is shared between the federal Medicaid program and the Minnesota Medical Assistance program through the MR/RC waiver. The county human services agency contracts with the service provider and manages the eligibility determinations and negotiations with the provider.

2. Late in 2000, the Surveillance and Integrity Review Section ("SIRS") at the Department received a referral about a dispute over the amount Grove Homes was paid for waived services for client K.K. from July 1, 1998 to October 18, 2000. SIRS investigated the claim and determined that Grove Homes had been overpaid for that period. SIRS also determined that Grove Homes had been overpaid for the transportation it provided to K.K. and another client, D.L., and that Grove Homes had billed for transportation of K.K. and D.L. that was never provided.

3. By Notice of Agency Action dated March 15, 2001, the Department sought to recover alleged overpayment to Grove Homes totaling \$336,743.03. Grove Homes appealed the SIRS determination and requested a contested case hearing.

4. Prior to the contested case hearing, Grove Homes brought a motion for summary disposition arguing that the Administrative Law Judge did not have jurisdiction to decide the matter and that the Department did not have a basis in statute to pursue

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<sup>2</sup> See, Minnesota Rule 1400.8401, subp. 7. The Administrative Law Judge takes judicial notice of the entire record in this matter, including exhibits and testimony offered in the September 20, 21, and 22, 2004 contested case hearing. Accordingly, some of the Findings contained in this decision are derived from the record of the contested case hearing.

repayment of the alleged overpayment. The Administrative Law Judge denied the motion, concluding that the Department has broad authority to pursue administrative recoupment in this case and that the Office of Administrative Hearings had jurisdiction to hear such matters.

5. The contested case hearing was held on September 20, 21, and 22, 2004.

6. On November 30, 2004, the Administrative Law Judge issued a decision recommending that the Commissioner deny the Department's petition to recover funds paid to Grove Homes, Inc. for supported living services in the amount of \$276,900.19, and permit the Department to recover the portion of \$52,189.08 and \$7,653.76 paid for providing transportation services for the two clients on days when no transportation was actually provided.

7. By order entered on August 20, 2005, the Commissioner adopted the ALJ's findings, conclusions, recommendation, and most of the memorandum and ordered that the Department recover only the portion of \$52,189.08 and \$7,653.76 paid for providing transportation on days when no transportation was provided. In addition, the Commissioner remanded the recovery portion of the case to the Department to determine the amount of \$52,189.08 and \$7,653.76 that the Department could rightfully recover.

8. On September 16, 2005, Grove Homes filed an application for attorney's fees and costs pursuant to Minnesota Rule 1400.8401 and the Minnesota Equal Access to Justice Act (MEAJA), Minn. Stat. §§ 15.471 to 15.474.<sup>3</sup> On September 29, 2005, the Administrative Law Judge denied the motion as premature because the Commissioner had not yet issued a final order.

9. The parties reached an agreement on the amount of the overpayment for transportation on November 9, 2005, and on March 1, 2006, the parties informed the Commissioner that they had reached a Stipulation of Settlement on the remaining issues. By Order dated March 2, 2006, the Commissioner incorporated the Stipulation of Settlement and the August 20, 2005 Order and adopted the two documents as the final order in this matter.

10. Grove Homes renewed its motion for attorney's fees and costs on March 15, 2006. Grove Homes seeks \$54,063.48 in fees and costs.

Based on these Findings of Fact, the Administrative Law Judge makes the following:

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<sup>3</sup> Grove Homes petitioned for fees and costs totaling \$52,202.54.

## CONCLUSIONS OF LAW

1. The Administrative Law Judge has authority to conduct proceedings and to make findings, conclusions, and a final order pursuant to Minn. Stat. §§ 14.50, 14.62, and 15.472, and Minn. R. 1400.8401, subp. 7.

2. The parties agree that Grove Homes is a “party” as defined under the Minnesota Equal Access to Justice Act.<sup>4</sup> The Department does not dispute that Grove Homes is a “prevailing party.”

3. Grove Homes has the burden of proving by a preponderance of the evidence that the Department’s action to recoup the overpayment was not substantially justified.<sup>5</sup>

4. Grove Homes has failed to establish by a preponderance of the evidence that the Department’s filing of the Notice of Agency Action to recover the overpayments to Grove Homes was not substantially justified.

5. The Department’s Notice of Agency Action had a reasonable basis in law and fact, based on the totality of the circumstances before and during the contested case proceeding, and was therefore substantially justified.<sup>6</sup>

6. These Conclusions are reached for the reasons discussed in the attached Memorandum, which is hereby incorporated by reference.

Based upon the foregoing Conclusions, the Administrative Law Judge makes the following:

## ORDER

IT IS HEREBY ORDERED: That Respondent Grove Homes’ application for attorney’s fees and expenses is DENIED.

Dated this 1st day of May 2006.

s/Beverly Jones Heydiner  
BEVERLY JONES HEYDINGER  
Administrative Law Judge

<sup>4</sup> Minn. Stat. § 15.471, subd. 6.

<sup>5</sup> Minn. Stat. § 15.472; Minn. Rule 1400.7300, subp. 5. *See also, Donovan Contracting of St. Cloud v. Minnesota Department of Transportation*, 469 N.W.2d 718, 720 (Minn. App. 1991), *review denied* (Minn. August 2, 1991).

<sup>6</sup> *See*, Minn. Stat. § 15.471, subd. 8.

## MEMORANDUM

Respondent Grove Homes has submitted an application for attorney's fees and costs in this matter pursuant to the Minnesota Equal Access to Justice Act.<sup>7</sup> Respondent maintains that the Department pursued its attempt to recover the overpayments to Grove Homes without a reasonable basis in fact and law. Consequently, Respondent contends that the Department's position was not substantially justified. Respondent seeks attorney's fees and costs in the amount of \$54,063.48.

The Equal Access to Justice Act authorizes an award of attorney fees and costs to a prevailing party in contested cases. However, because the Act is a limited waiver of sovereign immunity, courts strictly construe its language.<sup>8</sup> "Party" is defined in a restrictive fashion in the Act to include only small businesses, those with not more than 500 employees or annual revenues over seven million dollars.<sup>9</sup> Recovery is available only against the state,<sup>10</sup> and only in cases where the state's position is represented by counsel and does not have a reasonable basis in law and fact.<sup>11</sup>

Although the Administrative Law Judge found that the Department failed to prove by a preponderance of the evidence that Grove Homes should be obligated to repay all of the overpayments, the Department's position was substantially justified within the meaning of the Act.<sup>12</sup> The Equal Access to Justice Act defines "substantially justified" to mean that the state's position "had a reasonable basis in law and fact, based on the totality of the circumstances before and during the litigation or contested case hearing."<sup>13</sup> In *Donovan Contracting of St. Cloud, Inc. v. Minnesota Dept. of Transportation*,<sup>14</sup> the Minnesota Court of Appeals construed "substantially justified" to mean "justified to a degree that could satisfy a reasonable person" rather than "justified to a high degree."

The Department pursued its Notice of Agency Action to recover large overpayments from Grove Homes on Minnesota law and rule. According to Minn. Stat. § 256B.064, subd. 1c(a), "the commissioner may obtain monetary recovery from a vendor who has been improperly paid as a result of a vendor or department error, regardless of whether the error was intentional." Furthermore, Minnesota Rules require

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<sup>7</sup> Minn. Stat. §§ 15.471 - 15.474.

<sup>8</sup> *Donovan Contracting of St. Cloud, Inc. v. Minnesota Department of Transportation*, 469 N.W.2d 718 (Minn. App. 1991), review denied (Minn. August 2, 1991).

<sup>9</sup> Minn. Stat. § 15.471, subd. 6.

<sup>10</sup> Minn. Stat. § 15.472; See, *City of Mankato v. Mahoney*, 542 N.W.2d 689 (Minn. App. 1996).

<sup>11</sup> Minn. Stat. § 15.472; See, *Donovan Contracting*, 469 N.W.2d at 720.

<sup>12</sup> *Donovan Contracting*, 469 N.W.2d at 720-21 ("No presumption arises that the agency's position was not substantially justified simply because the agency did not prevail." (quoting, Minn. R. 1400.8401, subp. 3(A)(2)(c) (1989).)

<sup>13</sup> Minn. Stat. § 15.471, subd. 8.

<sup>14</sup> 469 N.W.2d 718, 720 (Minn. App. 1991).

the commissioner to seek recovery of payments made in error, intentionally or unintentionally, by the provider, state, or local welfare agency.<sup>15</sup>

Grove Homes argues that the Department's case was not substantially justified because the Department refused to settle the case despite repeated attempts by Grove Homes to resolve the matter, knew with relative certainty that Grove Homes would be put out of business if it had to repay all of the overpayments, and accepted the complaint that initiated this proceeding from the very individual whose carelessness caused the overpayments.

None of these arguments by Grove Homes negates the fact that the Department was justified by law in pursuing monetary recovery from Grove Homes. Also significant to the Administrative Law Judge is that Grove Homes brought a motion for summary disposition early on in the case, which was denied. The Administrative Law Judge determined that genuine issues of material fact were still at issue, and this lends credibility to the reasonable basis in fact that the Department had in pursuing recovery of this very large overpayment.

After considering the hearing record in this matter, the ALJ concludes that the Department's pursuit to recover the overpayments was substantially justified within the meaning of the Equal Access to Justice Act.

Because Respondent did not demonstrate that the Department's action was not substantially justified within the meaning of the Minnesota Equal Access to Justice Act, Respondent's application for fees and expenses is denied. Accordingly, the Administrative Law Judge need not determine whether Grove Homes is entitled to recover attorney's fees at a rate higher than the statutory rate.

**B.J.H.**

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<sup>15</sup> Minn. R. parts 9505.2215, subp. 1A and 9505.0465, subp. 1.